

REMARKS

Claims 1-9 and 38-48 are currently pending in the subject application and are presently under consideration. Non-elected claims 10-37 are cancelled. Applicant reserves the right to prosecute these claims in one or more subsequently filed divisional applications. Applicant's representative thanks Examiner Kim for the courtesies extended to Jay Ryan in a telephone interview dated October 10, 2006. Claims 1 and 8 have been amended and new claims 38-48 have been added as shown on pp. 2-5 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-9 Under 35 U.S.C. §101

Claims 1-9 stand rejected under 35 U.S.C. §101 for lacking utility. This rejection should be withdrawn for at least the following reasons. Independent claim 1 recites *a system that facilitates web-crawling, comprising a managing component that performs a predictive analysis in connection with determining if, when, and how to perform web-crawling, and a web-crawling component that crawls subsets of web pages as a function of the predictive analysis, to discover and update the pages in a catalogue of possible search results*. The Office Action contends that the claims are non-statutory because they do not encompass tangible subject matter. Applicants' representative avers to the contrary.

According to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), the legal standard set forth by the Federal circuit for determining whether claims are directed towards statutory subject matter is whether the claims can be applied in a practical application to produce a useful, concrete and tangible result. In *AT&T*, the patent at issue described a message record for long-distance telephone calls that included a primary interexchange carrier ("PIC") indicator, which allowed for differential billing treatment for subscribers. (See *AT&T*, 172 F.3d at 1353). *AT&T*'s claimed process applied Boolean algebra "to determine the value of the PIC indicator, and [applied] that value through switching and recording mechanisms to create a signal useful for billing purposes." (See *AT&T*, 172 F.3d at 1358). Relying on its holdings in *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), *cert. denied*, 525 US 1093 (1999) and *Arrhythmia Research Tech. Inc. v. Corazonix Corp.*, 958 F.2d 1053 (Fed. Cir. 1992), the Court held that the *AT&T*

process was patentable subject matter:

In *State Street*, we held that the processing system there was patentable subject matter because the system takes data representing discrete dollar amounts through a series of mathematical calculations to determine a final share price – **a useful, concrete, and tangible result**. See 149 F.3d at 1373, 47 USPQ2d at 1601. In this case, Excel argues, correctly, that the PIC indicator value is derived using a simple mathematical principle (p and q). But that is not determinative because AT&T does not claim the Boolean principle as such or attempt to forestall its use in any other application. It is clear from the written description of the ‘184 patent that AT&T is only claiming a process that uses the Boolean principle in order to determine the value of the PIC indicator. The PIC indicator represents **information** about the call recipient’s PIC, **a useful, non-abstract result** that facilitates differential billing of long-distance calls made by an IXC’s subscriber. Because the claimed process applies the Boolean principle to produce **a useful, concrete, tangible result** without pre-empting other uses of the mathematical principle, on its face the claimed process comfortably falls within the scope of Section 101. See *Arrhythmia Research Tech. Inc. v. Corazonix Corp.*, 958 F.2d 1053, 1060, 22 USPQ2d 1033, 1039 (Fed. Cir. 1992) (“That the product is numerical is not a criterion of whether the claim is directed to statutory subject matter.”). See *AT&T*, 172 F.3d at 1358 (emphasis added).

The *system that facilitates web-crawling* in the subject independent claim 1 clearly provides “a managing component” that performs a predictive analysis in connection with determining if, when, and how to perform web-crawling, and “a web-crawling component” that crawls subsets of web pages as a function of the predictive analysis, *to discover and update the pages in a catalogue of possible search results* -- a useful, concrete and tangible result that therefore satisfies the legal requirement set forth by the Federal Circuit in *AT&T Corp. v. Excel Communications, Inc.*

In view of at least the foregoing, it is apparent that applicants’ claimed invention produces a useful, concrete and tangible result pursuant to *AT&T Corp. v. Excel Communications, Inc.* Accordingly, this rejection should be withdrawn with respect to independent claim 1, and claims that depend there from.

II. Rejection of Claims 1-2 and 5-9 Under 35 U.S.C. §102(e)

Claims 1-2 and 5-9 stand rejected under 35 U.S.C. §102(e) as being anticipated by Squillante *et al.* (US 2004/0225644). This rejection should be withdrawn for the following reasons. Squillante *et al.* does not disclose or suggest each and every limitation set forth in the subject claims.

A single prior art reference anticipates a patent claim only if it ***expressly or inherently describes each and every limitation set forth in the patent claim.*** *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The ***identical invention must be shown in as complete detail as is contained in the ... claim.*** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Applicants' claimed invention relates to a system and method that facilitates web-crawling. In particular, independent claim 1 (and similarly independent claims 38 and 47) recites *a managing component that performs a predictive analysis to predict when a web page will change, in order to determine if, when, and how to perform web-crawling and a web-crawling component that crawls subsets of web pages as a function of the predictive analysis.* Squillante *et al.* does not disclose or suggest these novel aspects of the invention as claimed.

Squillante *et al.* relates to a method and apparatus for crawling web pages. Squillante *et al.* determines optimal frequencies for web crawling, as well as theoretically optimal times to crawl each web page. Squillante *et al.* implements these functions "under an extremely general distribution model of Web page updates" which includes "both stochastic and generalized deterministic update patterns." Contrary to the assertions in the Office Action, the cited document does not disclose the aspects of the claimed *management component* or the *web-crawling component*, at paragraphs [0006] and [0029] or anywhere else in the document. Instead, paragraph [0029] discloses a "crawler optimizer" that fixes a "scheduling interval" for determining a number of crawls over a fixed period of time. Paragraph [0006] in Squillante *et al.*'s "Background" section merely discloses that "a crawler visits web pages on various web sites," which is the standard function of a crawler as understood in the art. Nothing in these paragraphs or elsewhere that discloses or suggests the aforementioned aspects recited in the independent claims. Thus, it is

apparent that the cited document and the claimed invention are distinguishable on at least this ground. For at least the above reasons, the rejection of independent claims 1, 38 and 47 (and claims that depend there from) should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP557US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Reg. No. 40,894

AMIN, TUROCY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731